

SSB 5373 - S AMD 80

By Senators Jacobsen, Clements

WITHDRAWN 03/12/2007

1 Beginning on page 13, line 10, after "**Sec. 8.**" strike all material
2 through "act." on page 16, line 25, and insert "For the purposes of
3 this chapter:

4 (1) "Client" means any person who enters into a professional
5 employer agreement with a professional employer organization.

6 (2) "Coemployer" means either a professional employer organization
7 or a client.

8 (3) "Coemployment relationship" means a relationship that is
9 intended to be an ongoing relationship rather than a temporary or
10 project-specific one, wherein the rights, duties, and obligations of an
11 employer, which arise out of an employment relationship, have been
12 allocated between coemployers under a professional employer agreement
13 and applicable state law. In such a coemployment relationship:

14 (a) The professional employer organization is entitled to enforce
15 only such employer rights and is subject to only those obligations
16 specifically allocated to the professional employer organization by the
17 professional employer agreement or applicable state law;

18 (b) The client is entitled to enforce those rights and obligated to
19 provide and perform those employer obligations allocated to such client
20 by the professional employer agreement and applicable state law; and

21 (c) The client is entitled to enforce any right and obligated to
22 perform any obligation of an employer not specifically allocated to the
23 professional employer organization by the professional employer
24 agreement or applicable state law.

25 (4) "Covered employee" means an individual having a coemployment
26 relationship with a professional employer organization and a client who
27 meets all of the following criteria:

28 (a) The individual has received written notice of coemployment with
29 the professional employer organization; and

30 (b) The individual's coemployment relationship is pursuant to a
31 professional employer agreement.

1 Individuals who are officers, directors, shareholders, partners,
2 and managers of the client are covered employees to the extent the
3 professional employer organization and the client have expressly agreed
4 in the professional employer agreement that such individuals would be
5 covered employees and provided such individuals meet the criteria of
6 this subsection and act as operational managers or perform day-to-day
7 operational services for the client.

8 (5) "Department" means the employment security department.

9 (6) "Professional employer agreement" means a written contract by
10 and between a client and a professional employer organization that
11 provides for:

12 (a) The coemployment of covered employees; and

13 (b) The allocation of employer rights and obligations between the
14 client and the professional employer organization with respect to the
15 covered employees.

16 (7) "Professional employer organization" means any person engaged
17 in the business of providing professional employer services. The
18 following shall not be deemed to be professional employer organizations
19 or the provision of professional employer services for the purposes of
20 this section:

21 (a) Arrangements where a person, whose principal business activity
22 is not entering into professional employer arrangements and which does
23 not hold itself out as a professional employer organization, shares
24 employees with a commonly owned company within the meaning of section
25 414 (b) and (c) of the internal revenue code of 1986, as it exists on
26 the effective date of this section;

27 (b) Independent contractor arrangements by which a person assumes
28 responsibility for the product produced or service performed by such
29 person or his or her agents and retains and exercises primary direction
30 and control over the work performed by the individuals whose services
31 are supplied under such arrangements; or

32 (c) Providing staffing services.

33 (8) "Professional employer services" means the service of entering
34 into a coemployment relationship with a client in which all or a
35 majority of the employees providing services to a client or to a
36 division or work unit of a client are covered employees.

1 NEW SECTION. **Sec. 9.** (1) Notwithstanding other provisions of this
2 title to the contrary, personal services performed for, or for the
3 benefit of, a client company under a professional employer agreement
4 between a registered professional employer organization and a client
5 company, is deemed to be employment for the professional employer
6 organization when the professional employer organization is
7 responsible, under contract or in fact, for the payment of wages in
8 remuneration for the services performed.

9 (2) The registered professional employer organization is considered
10 the employer as defined in RCW 50.04.080.

11 NEW SECTION. **Sec. 10.** (1) No person shall provide, advertise, or
12 otherwise hold itself out as providing professional employer services
13 in this state, unless such person is registered with the department
14 under this title.

15 (2) Each applicant for registration under this title, shall provide
16 the department with the following information:

17 (a) The name or names under which the professional employer
18 organization conducts business;

19 (b) The address of the principal place of business of the
20 professional employer organization and the address of each office it
21 maintains in this state;

22 (c) The professional employer organization's taxpayer or employer
23 identification number;

24 (d) The professional employer organization's unemployment insurance
25 account number;

26 (e) A list by jurisdiction of each name under which the
27 professional employer organization has operated in the preceding five
28 years, including any alternative names, names of predecessors, and, if
29 known, successor business entities; and

30 (f) A statement of ownership, which must include the name and
31 business address of any controlling person. For the purposes of this
32 section, a controlling person is any person that, individually or
33 acting in concert with one or more other persons, owns or controls,
34 directly or indirectly, twenty-five percent or more of the equity
35 interests of the professional employer organization.

1 NEW SECTION. **Sec. 11.** (1) Each professional employer organization
2 operating within this state as of the effective date of this section
3 shall complete its initial registration not later than one hundred
4 eighty days after the effective date of this section. This initial
5 registration is valid until the end of the professional employer
6 organization's first fiscal year end that is more than one year after
7 the effective date of this section.

8 (2) Upon initial registration, each professional employer
9 organization must provide the department with a full and complete list
10 of client companies engaged in a coemployment relationship operating in
11 the state of Washington.

12 (3) Each professional employer organization not operating within
13 this state as of the effective date of this section shall complete its
14 initial registration prior to commencement of operations within this
15 state.

16 NEW SECTION. **Sec. 12.** (1) Not more than ten days after the end of
17 each calendar quarter, a professional employer organization must
18 provide to the department a complete list of any new client companies
19 that have entered into a professional employer agreement and a list of
20 any client companies that have terminated a professional employer
21 agreement.

22 (2) Professional employer organizations must report the following
23 information:

- 24 (a) The name or names under which the client conducts business;
- 25 (b) The address of the principal place of business of the client
26 company;
- 27 (c) The inception date of the professional employer agreement;
- 28 (d) The client company's taxpayer or employer identification
29 number;
- 30 (e) The client company's unemployment insurance account number
31 prior to entering the professional employer agreement; and
- 32 (f) A detailed list of the coemployees year-to-date wages and
33 unemployment taxes paid prior to entering the professional employer
34 agreement.

35 (3) The department shall maintain a list of professional employer
36 organizations registered under this title. The department shall also

1 maintain a list of client companies engaged in a professional employer
2 agreement.

3 (4) The department may prescribe forms necessary to promote the
4 efficient administration of this section.

5 NEW SECTION. **Sec. 13.** All records, reports, and other information
6 obtained from a professional employer organization under this title,
7 except to the extent necessary for the proper administration of this
8 title by the department, are confidential and shall not be published or
9 open to public inspection other than to public employees in the
10 performance of their public duties.

11 NEW SECTION. **Sec. 14.** (1) Upon the renewal of a professional
12 employer organization's rate notice each year, the department shall:

13 (a) List client companies that entered the professional employer
14 agreement over the prior twelve calendar months on the professional
15 employer organization's rate notice; and

16 (b) Apply each new client company's unemployment insurance rate
17 immediately prior to entering the professional employer agreement with
18 the professional employer organization's unemployment insurance rate
19 proportionally on the basis of covered employees from that client to
20 the total covered employees of the professional employer organization
21 to arrive at a new rate for the professional employer organization to
22 be used for all twelve months of the following rate year.

23 (2) Upon the inception of a professional employer agreement, a
24 professional employer organization shall carry over the year-to-date
25 wages paid and year-to-date unemployment tax remitted to the state for
26 each coemployee and continue to pay unemployment tax up to the wage
27 base limit set by the department.

28 (3) A professional employer organization is not liable for errors
29 in reporting, payment, delinquent payments, or any other unemployment
30 insurance liability for a client company prior to the inception date of
31 the professional employer agreement. A client company is not liable
32 for errors in reporting, payment, delinquent payments, or any other
33 unemployment insurance liability for a professional employer
34 organization during the contract period of the professional employer
35 agreement.

1 NEW SECTION. **Sec. 15.** (1) If a client company and a professional
2 employer organization terminate a professional employer agreement for
3 any reason up to thirty months from the inception date of the contract,
4 the department shall assign the client company the same unemployment
5 insurance rate it held prior to entering into the professional employer
6 agreement.

7 (2) If a client company and a professional employer organization
8 terminate a professional employer agreement for any reason after thirty
9 months from the inception date of the contract, the department shall
10 assign the client employer a rate based on the professional employer
11 organization's rate."

12 Renumber the remaining sections consecutively and correct any
13 internal references accordingly.

14 On page 21, line 14, after "**Sec. 24.**" strike "Sections 5, 6, and 10
15 through 12" and insert "Sections 5 and 6"

16 On page 21, after line 15, insert the following:

17 "NEW SECTION. **Sec. 25.** Sections 8 through 15 of this act
18 constitute a new chapter in Title 50 RCW."

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19 On page 1, line 2 of the title, after "system;" strike the
20 remainder of the title and insert "amending RCW 50.12.070, 50.29.021,
21 50.12.220, 50.04.165, 50.04.310, 50.24.160, 50.20.070, 50.04.245,
22 50.24.170, 50.04.080, and 50.04.090; adding new sections to chapter
23 50.04 RCW; adding a new section to chapter 50.24 RCW; adding a new
24 chapter to Title 50 RCW; creating new sections; prescribing penalties;
25 and providing effective dates."

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